COMMISSION FOR THE PROTECTION OF COMPETITION

ANNUAL REPORT 2010
CYPRUS

COMMISSION FOR THE PROTECTION OF COMPETITION

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The present Annual Report is prepared and submitted to the Minister of Commerce, Industry and Tourism and the House of Representatives by the Commission for the Protection of Competition, in accordance with section 48 of the Protection of Competition Law of 2008.

November 2011

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Costakis Christoforou

Statement by the Chairman of the Commission for the Protection of Competition

"Competition....valuable tool dealing with current economic crisis"

The present report constitutes an unequivocal statement of our activities in the year 2010. Short but comprehensive, this report represents the activities carried out by the Commission, utilizing to the maximum the small number of staff and the minimal means available. Without doubt, it is an attestation that the Commission has produced work, in all areas of its jurisdiction, in disproportion to its limited resources.

The efforts for the reinforcement of the Service of the Commission with sufficient staff continued during the year under review with the Commission bearing to a great extent, the consequences of fiscal restrictions and the general policy of economic restrain.

Through a multitude of contacts we insist and declare our position that competition and the institutional bodies that enforce its principles are not and should not form part of the current economic crisis but should constitute a valuable tool of dealing with it.

The Commission through its decisions, bearing absolute respect to Laws and procedures but with determination, has tried to send the message that firm adherence to the principles of competition, will benefit the economy in general and the consumer more specifically both in the medium and long term.

Competition is not and should not constitute a target itself. Competition constitutes a substantive tool for regulating and developing the market, even if it does not offer answers to all concerns. Its function is to cooperate and co-function with a number of other regulatory bodies towards the general effort for progress and development; within a competitive market.

With these thoughts I introduce the current report, expressing the hope that the awareness in relation to competition will increase and that it will be established as an integral part of our economic culture.

Costakis Christoforou
Chairman of the Commission of the Protection of Competition
(Until the 24th of May, 2011)

1. THE COMMISSION FOR THE PROTECTION OF COMPETITION IN 2010

1.1 Mission

The Commission for the Protection of Competition (C.P.C.) is the independent Authority vested with the exclusive competence for ensuring a healthy competitive environment.

The Protection of Competition Law of 2008, in accordance with the Control of Concentrations between Enterprises Laws of 1999 and 2000, establishes the framework of regulations and principles aimed at securing effective and healthy competition within the Cypriot market.

The competition policy secures the effective and productive operation of the market, thus contributing to the creation of a climate favourable to innovation and technological advancement for the benefit of consumers, who can enjoy better quality products and services at competitive prices.

As effective competition is vital in an open economy, the C.P.C. is vested with broadened powers and competences, which ensure the adherence of the principles and regulations in a free economy.

The main competences of the Commission are:

- To control restrictive agreements and concerted practices by enterprises having as their object or effect the elimination, restriction or distortion of competition
- To control the abuse of dominant position possessed by one or more enterprises
- The control of concentrations between enterprises aiming at preventing distortions in effective competition and ensuring that the principles of competitive markets are respected.

Additionally the Commission, through its designation as the National Competent Authority is empowered to apply articles 101 and 102 of the Treaty on the Functioning of the European Union (ex articles 81 and 82 of the Treaty of the European Community), Council Regulation (EC) No. 1/2003 of the Council of the European Union of 16th of December 2002, on the implementation of the rules on competition laid down in articles 101 and 102 of the Treaty on the Functioning of the European Union.

1.2 Main activities during 2010

The year under review was marked by important events which gave a new perspective on competition issues. More precisely:

• On 1/2/2010 the recruitment of fourteen new officers of the Service of the Commission for the Protection of Competition was completed (Salary Scales A8-A10-A11).

• The relocation of the Commission for the Protection of Competition to newly-erected premises in 53, Strovolos Avenue, has been completed.

• On 21st and 22nd of May 2010, the 4th International Conference on Competition Law and Policy was organized by the Institute for studies in Competition Law and Policy (named IMEDIPA). The conference was held under the auspices of the Commission for the Protection of Competition of Cyprus and the Hellenic Competition Commission.

• The drafting of the preliminary Regulation on granting Immunity and Reducing Administrative Fines in cases of concerted practices that infringe section 3 of Law No 13(1)/2008 and/or article 101 of the Treaty on the Functioning of the European Union (Leniency Programme) was completed and approved by the Council of Ministers.

• On 1/10/2010, the procedure for filling the Director's position of the Service of the Commission for the Protection of Competition established under the Protection Competition Law 13(I)/2008 was completed.

• The study of the proposed draft Regulation concerning the internal operating procedure of the Commission was completed and forwarded via the Ministry of Commerce, Industry and Tourism to the Legal Office of the Republic for the required legal review.

• As part of the advocacy programme, the Commission organized internal seminars and encouraged participation in conferences both locally and abroad for the staff of the Service.

Composition Organization Training

2. STRUCTURE OF THE COMMISSION FOR THE PROTECTION OF COMPETITION

2.1 The Commission - Members

According to the Law for the Protection of Competition of 2008, the Commission consists of the Chairman and four Members serving on a full time basis, and on terms defined by virtue of a decision by the Council of Ministers. The Law also provides for the appointment of four substitute members, one for each member of the Commission. The Chairman of the Commission is of a high standing and probity, possessing specialized knowledge and experience in law and is capable to contribute to the effective application of the Law. The four Members of the Commission are persons with specialized knowledge and experience in law, or economics, or competition, or accounting, or trade, or industry, and are capable to contribute to the effective application of the Law. The Law prohibits the Members of the Commission from having any financial or other interest likely to affect the impartiality of their judgement in the exercise of their functions, powers and duties of the Commission. The term of office of the Chairman and the Members is for a period of five years and may only be renewed once.

A. Chairman

In 2010, the Commission's Chairman was Mr. Costakis Christoforou, who was appointed by virtue of a decision by the Council of Ministers for a period of five years, as from 18/4/2008.

B. Members and Substitute Members

During 2010, the Commission's Members were Mr. Leontios Vryonides, Ms Eleni Karaoli, Mr. Demetris Pitsillides and Ms Loukia Christodoulou, who were appointed by virtue of a decision by the Council of Ministers, for a period of five years, as from 14/5/2008.

The Council of Ministers has also appointed the following substitute members:
Mr. Andreas Karydes, Mr. Costas Mavrides, Mr. Sotos Hadjittofis and
Ms Eleni Christodoulidou - Papageorgiou.

2.2 Service of the Commission for the Protection of Competition

The Commission is supported by the Service of the Commission and following the authorization by the Commission, is competent to duly conduct preliminary investigations to determine whether there have been infringements of the Protection of Competition Law. It is also competent to evaluate concentrations between enterprises pursuant to the provisions of the Control of Concentrations between Enterprises Law.

The Service is empowered to collect and examine the information necessary for the exercise of the Commission's functions, to conduct on-the-spot investigations of enterprises, to introduce complaints and submit recommendations to the Commission, to make the necessary communications and publications, to conduct preliminary evaluations of concentrations of enterprises, to prepare written reports, and to grant the Commission every possible facilitation in order to fulfill its functions, powers and duties.

On 1/10/2010, Mrs Christiana Sideri, formerly a Senior Officer of the Commission was appointed, as the Director of the Service of the Commission for the Protection of Competition. In addition, two Officers were promoted to Officers A and as a result the Commission had, in total, four Officers A. Accordingly, it must be noted that this is the first time that the Commission has created a hierarchy.

One of the most notable events that took place during 2010 was the recruitment of fourteen new Officers of the Commission for the Protection of Competition as from the 1st of February of 2010, which reinforced the Service of the Commission for the Protection of Competition. However, during the course of the year, nine Officers have left the Service as a result of their appointment in other positions of the Government Service. Therefore, by the end of 2010, the total number of permanent Officers of the Service amounted to only thirteen plus three non-permanent Officers.

The Service is also assisted by the secretarial and auxiliary personnel totaling fifteen employees.

During 2010, in the course of reinforcing the Service and assisting the Commission's action plan with appropriately trained staff capable to meet the demanding work of the Commission, the contract of services of one Economist was renewed on the basis of a specific contract of services. Moreover, during 2010, a legal consultant was recruited specializing in Competition Law.

2.3 Personnel Training

2.3.1 4th International Conference on "Competition Law and Policy" (IMEDIPA)

On the 21st and 22nd of May 2010, Commission Members and the Service's personnel participated in a conference held under the auspices of the Commission for the Protection of Competition of Cyprus and the Hellenic Competition Commission. The Conference was organized by the Institute for studies in Competition Law and Policy (IMEDIPA) and prominent personalities in the field of competition law participated in it.

The first day of the conference, dealt with recent changes concerning issues related to Competition Law and Policy in Greece and Cyprus and with the developments on issues concerning interaction between Competition Law and Consumers' Protection.

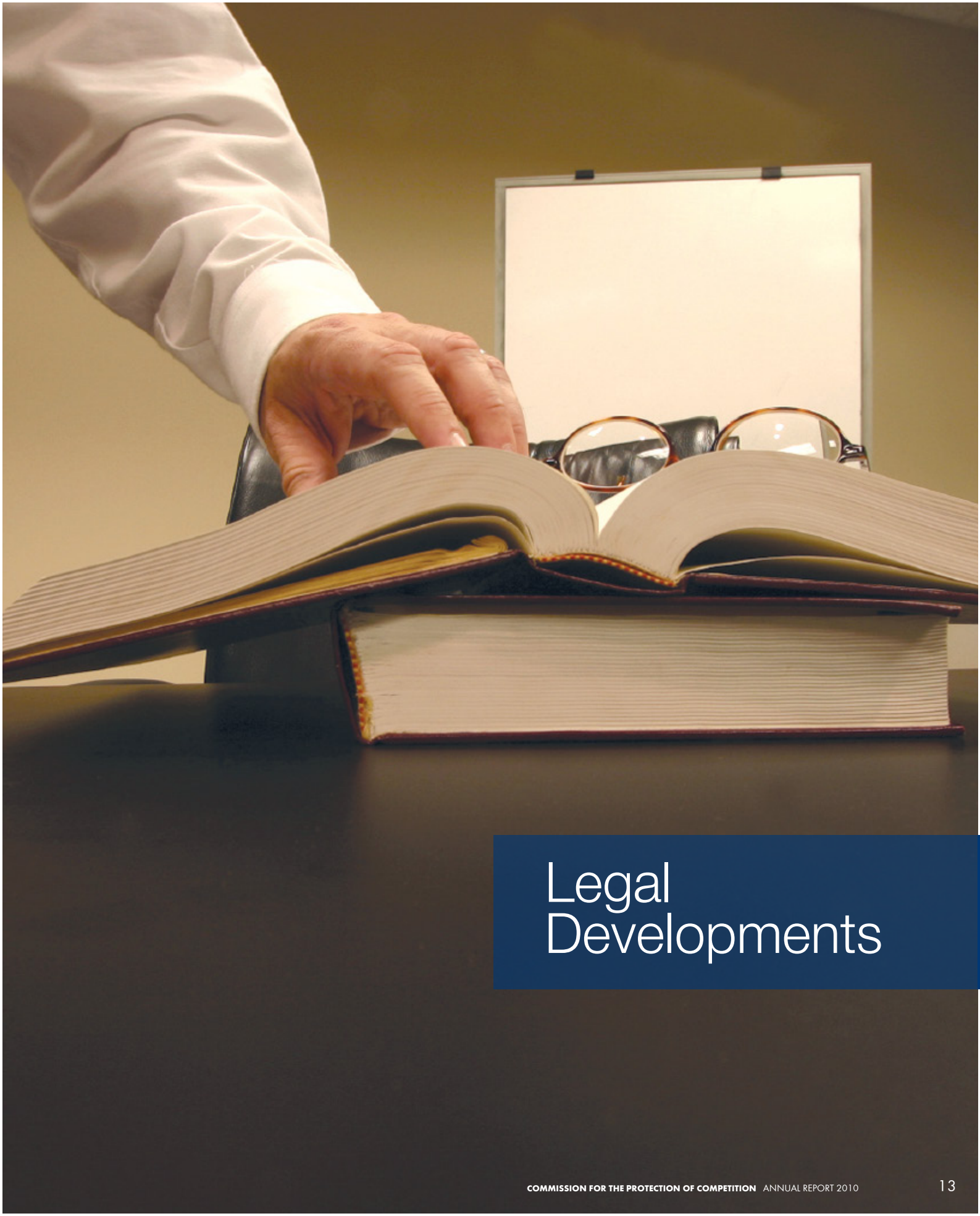
The second day of the conference focused on economic aspects of information exchange in Competition Law and on issues of competition policy concerning small economies.

During the Conference the participants had the opportunity to exchange views on competition matters.

2.3.2 Educational visit of the Officers of Competition Authorities of the European Competition Network to the European Commission – Directorate General for Competition

Three Officers of the Service of the Commission for the Protection of Competition participated in study visits to the Directorate General for Competition organized within the frame of the European Competition Network between 1/3/2010 until 26/3/2010 and 4/10/2010 until 29/10/2010. The Officers participated in Directorate C: Information, Communication and Media and Directorate G: Cartels and had the chance to attend a number of seminars and practical analyses of cases through their work in these Directorates and through the general programme of work as it was configured by the European Competition Network.

The visit aimed at obtaining an understanding on how the Directorate General for Competition operates on the legislative and regulatory developments, the consideration of a practical way of dealing with cases by the European Commission and by other national competition authorities, an awareness on cooperation between the various national competition authorities with the European Commission and ultimately meeting and exchanging views with Officers from all the other national competition authorities who took part in these training programs.



Legal Developments

3. RECENT LEGAL DEVELOPMENTS

3.1 Granting Immunity and Reducing Administrative Fines in cases of concerted practices, that infringe section 3 of Law 13(I)/2008 and/or article 101 of the Treaty on the Functioning of the European Union Regulations of 2011 (Leniency Programme)

The Commission, acting under the Protection of the Competition Law of 2008 (Law Number 13(I)/2008), and in particular pursuant to section 46, prepared a draft Regulation on granting immunity and/or reducing administrative fines for infringements Law in cases of anti - competitive concerted practices.

The proposed Regulation as empowered by the Law was deemed necessary since Leniency Programs proved to be useful tools of work and have proven value.

According to the draft Regulation, the Leniency policy pursued is based on the assumption that certain enterprises involved in cartels, are willing to put an end to their participation and provide evidence relating to the existence and operation of the cartels, but are dissuaded by the imposition of sanctions against them. The Commission considers that it is in the public interest to "reward" those enterprises which are willing to terminate their participation in this type of illegal practices and collaborate with it, thus contributing to the opening of an investigation or to the detection and proving of anti-competitive behaviour, by granting immunity from the imposition of any fines imposed by the Commission to the first informant. Moreover, the collaboration of one or more enterprises may justify the reduction of administrative fines by the Commission, on condition that certain requirements are fulfilled.

As it is generally acceptable, cartels are extremely harmful for the healthy operation of the market, as they limit or even eliminate competition, but by their very nature are difficult to detect and to prove due to lack of evidence. Consequently, the collaboration of enterprises in this area is particularly valuable to bring a successful action against such cartels.

In the light of this position, the Commission undertook a comparative study of other leniency programmes applied in other member states of the European Union as well as the European Commission notice on Leniency and the ECN Model Leniency Programme and drafted a Regulation. The relevant Regulation sets out the criteria and conditions laid down in section 24 of the Protection of Competition Law 13(I)/2008, by which the Commission for the Protection of Competition may grant immunity and/or reduce administrative fines imposed on an enterprise or associations of enterprises.

The drafted Regulation was forwarded to the Ministry of Commerce, Industry, and Tourism which submitted it to the Law Office of the Republic for legal vetting. During 2010, the legal vetting was completed and the Regulation was approved by the Council of Ministers. Within the year 2011 the Regulation will be forwarded to the House of Representatives for enactment.

3.2 The Protection of Competition Law Regulation (Internal Operations Procedure)

In accordance with the Protection of Competition Law of 2008 (Law Number 13(1)/2008), and specifically pursuant to section 46, the Commission began in 2009 the preparation of a draft Regulation governing its internal operation.

The proposed Regulation, as empowered by the Law, was deemed necessary, since throughout the years of the Commission's operation it became clear that there was a need to regulate certain aspects of the procedures adopted by the Commission in the enforcement of the Law. Consequently, this will result in greater transparency in its operations, so both the Courts and the parties involved become acquainted with the procedures followed by the Commission.

After the adoption of this Regulation, issues will be set concerning: a) general provisions for the Commission's operation b) procedures during the examination of the application and/or ex officio interim measures c) procedure of sending Statements of Objection and communicate written observations of the Parties d) procedure for access to the file - professional secrets and confidential information e) procedure followed before the Commission while examining alleged violation as required by law f) decision making process g) process of commitments h) imposition of administrative fines by the Commission for infringements of the Law.

The drafted Regulation has been forwarded to the Ministry of Commerce, Industry, and Tourism and it will then be submitted to the Law Office of the Republic of Cyprus for legal review before being approved by the Council of Ministers and subsequently forwarded to the House of Representatives to be enacted.

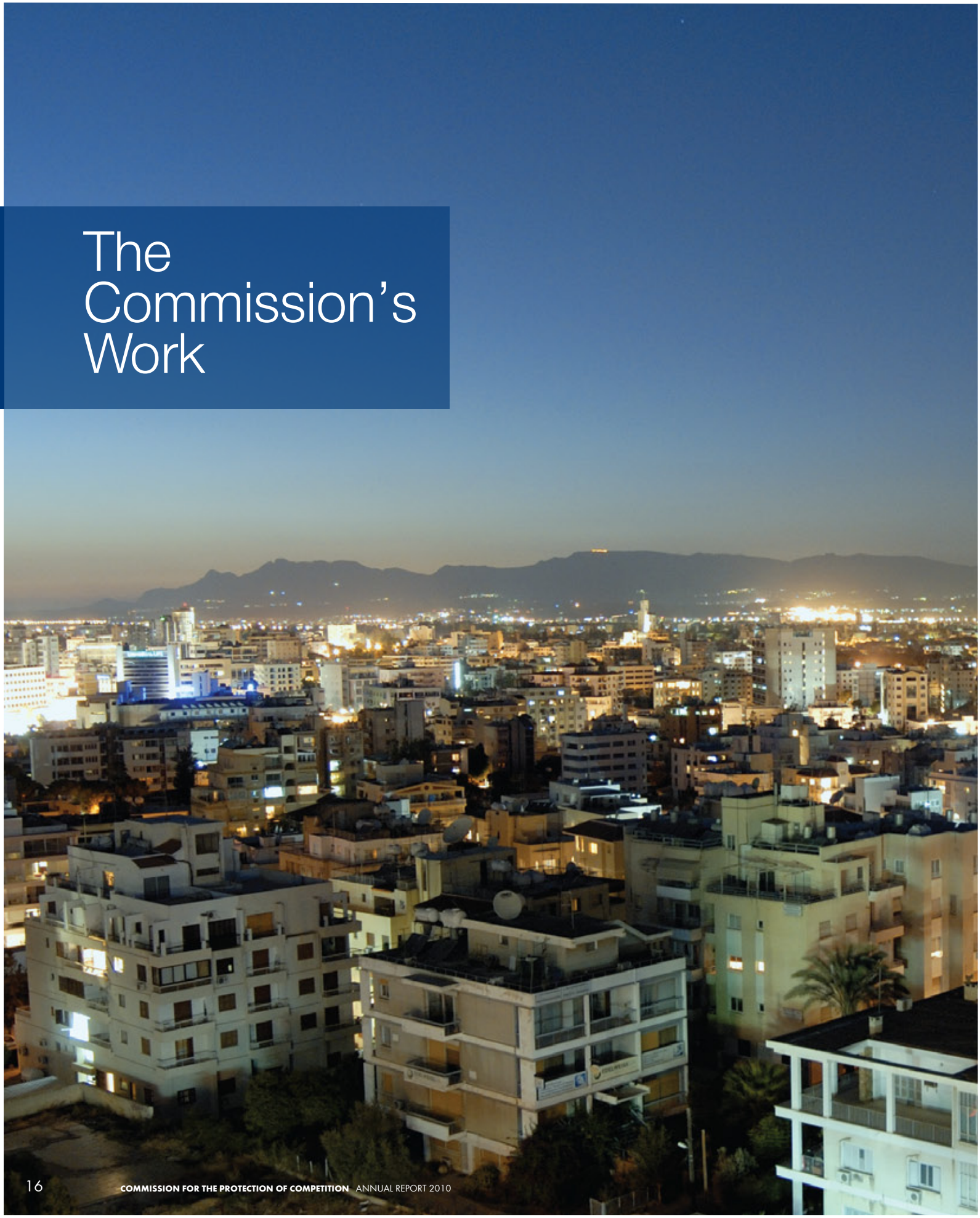
3.3 Participation of the Commission for the Protection of Competition in Parliamentary Committees at the House of Representatives

During the year under review, the Commission for the Protection of Competition acting within its jurisdictional powers has responded to invitations of Parliamentary Committees to submit its views from the perspective of Competition, on various issues that were under consideration by the Parliamentary Committees.

3.4 Opinions

According to the Law for the Protection of Competition 13(I)/2008 and particularly section 23(2)(l) of the Law the Commission has the power to provide public entities with opinions concerning issues related to its competence. The Commission for the Protection of Competition was asked by several public entities to provide its opinion on various matters that were under consideration by these public entities.

The Commission's Work



4. OVERVIEW OF THE COMMISSION'S ACTIVITIES

4.1. Overview of the decisions of the Commission

During the year under review, the Commission for the Protection of Competition held fifty-four meetings, during which, it examined a wide range of issues relating to complaints submitted, applications for interim measures, ex officio investigations and notifications of concentrations.

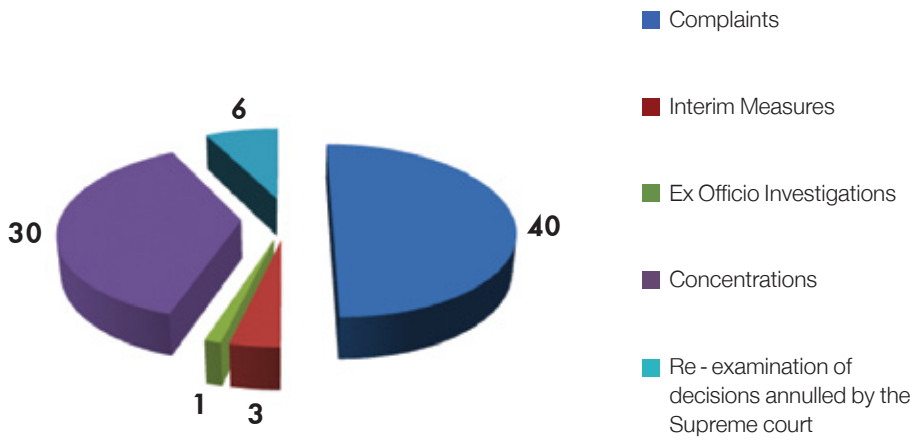
During 2010, the Commission issued three decisions for infringements of the Law and unanimously ordered their termination, and imposed administrative fines. Out of the three decisions issued, one concerned infringements of section 3 of the Law, and two of them related to infringements of section 6 of the Law. The decisions related to the supply of motor vehicles and the telecommunications sector respectively. The total amount of administrative fines, imposed during the year under review amounted to €3.334.452

In addition, following the conduct of preliminary investigations by the Service, the Commission issued fourteen decisions and unanimously concluded that, based on the available evidence no infringements of the Law were found. The respective decisions related to the electronic communications sector, public sector activities, tobacco products, employment services, cereals trading, touring and banking services.

Furthermore, during 2010, the Commission issued three interim decisions on applications for interim measures against undertakings/associations engaged in the supply of domestic road transport services, measurements of electromagnetic fields at mobile phone base stations and the supply of cows' milk.

Illustrated below is a cumulative table of decisions issued by the Commission for the year under review:

CUMULATIVE TABLE OF DECISIONS ISSUED	
Complaints	40
Interim Measures	3
Ex officio investigations	1
Re-examination of decisions annulled by the Supreme Court	6
Concentrations	30
Total	80



The Commission decided that for four of the complaints lodged, the alleged practices did not fall within the sphere of the Commission's competences, due to the fact that either the Commission had no substantive jurisdiction, or the complaints dealt with contractual relationships, or the complaints were lodged against the activities of other governmental departments which did not constitute economic activities but instead those departments exercised the powers of a public authority.

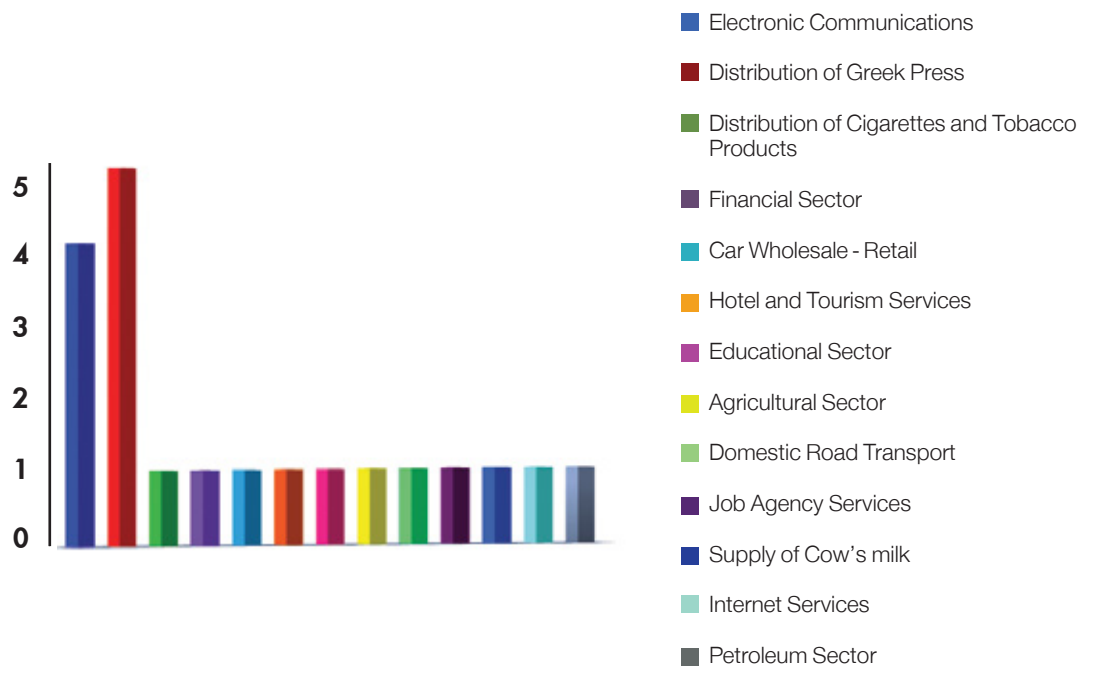
Moreover, fifteen complaints submitted to the Commission were dismissed, as they did not comply with the provisions of the relevant legislation, despite the fact that the complainants were given the opportunity to re-submit their complaints.

In addition, the Commission accepted five requests for withdrawal of the lodged complaints.

The Commission during the re-examination process of a decision has decided, in accordance to the information contained in the administrative file, that there were no prima facie findings and hence did not proceed with further examination of the case.

The Commission decided not to re-examine two of its decisions which had been annulled by the Supreme Court. For the first case the Commission decided that there were no valid reasons for review and for the second case the Commission decided that the public interest requirement would not be served by restarting a new procedure on the case.

Detailed below is a comprehensive table for each market sector for which an investigation was conducted and a decision issued during 2010:



4.1.1 Summary of Selected Cases

1.Decision Number: 1/2010 – Complaint by Thunderworx Ltd against the Cyprus Telecommunications Authority (CYTA) (Case number: 11.17.32/2006, Decision dated: 12/1/2010)

The case concerned a complaint filed by Thunderworx Ltd (hereinafter «Thunderworx») against the Cyprus Telecommunications Authority (hereinafter «CYTA») alleging that CYTA had abused its dominant position in the market of international fixed telephony as a result of the reduction of CYTA's international fixed telephony prices, as announced in February 2005. Thunderworx alleged that those price reductions resulted in a margin squeeze between retail and wholesale prices, as well as the selling of retail services of international fixed telephony, below total cost, thereby infringing the Protection of Competition Law.

At the time of the complaint, Thunderworx depended on CYTA's wholesale services in order to offer in the downstream market international calls. In particular, for all calls made by Thunderworx subscribers, CYTA's fixed national network had to be used, which was at the time the only national network. Also, a large part of Thunderworx's international calls was terminated to the requested country by CYTA's international services.

The Commission, having in mind that CYTA, used to be a state monopoly and that it is a vertically integrated organization with a dominant position in the market, of both fixed and mobile network, as well as in the retail market of fixed and mobile telephony services, but also the fact that it has an overall financial power, unanimously concluded that CYTA had a dominant position in the market of international termination calls services in Cyprus.

In determining whether the prices imposed by CYTA were unfair, the Commission examined Thunderworx's position about the alleged existence of a margin squeeze between wholesale sale of international termination calls and the retail prices for international fixed telephony, as well as the alleged existence of predatory pricing in the retail prices of the international fixed telephony.

The Commission in its decision concluded that at the time of the complaint there was technological and financial dependence of Thunderworx on CYTA regarding international fixed telephony services. Additionally, Thunderworx's financial dependence on CYTA was very important in a way that it could affect its functioning, efficiency, effectiveness and profitability. However, the Commission noted that in the international market there were cheaper alternative choices from third countries, from which Thunderworx could have bought these services, something that it did later on and which actually resulted in the reduction to a great extent of its dependency on CYTA.

The Commission having evaluated all the available evidence, unanimously concluded that there was no margin squeeze of Thunderworx's profit and price margins between wholesale fees for international termination calls and the retail prices of CYTA and so unanimously concluded that there was no infringement of section 6 (1) (a) of the Protection of Competition Law.

In relation to Thunderworx's allegation that CYTA, as a result of the quantitative discounts that it offered to consumers through the so called "international telephony schemes", the retail prices of international fixed telephony were predatory, the Commission noted that pursuant to the EU competition case-law, when a dominant firm charges prices that are below average variable cost, then those prices should always be considered abusive. Similarly, prices that are lower than the total cost but higher than the average variable cost must be considered abusive as far as it can be proved that they are part of a plan aiming to restrict competition.

The Commission in its decision concluded that CYTA's reductions of retail prices and the discounting packets offered from February 2005, covered more than its accounting cost (depreciation plus operating expenses), and allowed CYTA to earn a profit to the point that it also covered its financial cost, that is the cost of capital that represents the opportunity cost of a firm.

The Commission, unanimously concluded that from the economic analysis presented before it, there was no evidence to suggest that CYTA's pricing policy was predatory and therefore, it decided that there was no infringement of section 6(1)(a) of the Law.

2. Decision Number: 26/2010 - Complaint by TH & THE BIG SMOKE CIGARS & ACCESSORIES LTD against FEREOS GROUP OF COMPANIES (Fereos Ltd) (Case number: 11.17.18/2006, Decision dated: 23/6/2010)

The case concerned a complaint filed by TH & THE BIG SMOKE Cigars & Accessories Ltd (hereinafter «TH & THE BIG SMOKE») against FEREOS GROUP OF COMPANIES (Fereos Ltd) (hereinafter «FEREOS») for alleged infringements of the Protection of Competition Law. FEREOS is the exclusive representative of HABANOS cigars in Cyprus as well as the representative of other products in Cyprus such as cigarettes, tobacco and a variety of other kiosks products that are sold by TH & THE BIG SMOKE, a company that mainly distributes cigars.

According to the complaint, FEREOS was threatening TH & THE BIG SMOKE's customers with the refusal to supply goods in case they cooperated or continued to buy HABANOS's cigars from TH & THE BIG SMOKE. As a result, TH & THE BIG SMOKE's customers refused and/or hesitated to place the complainant's imported products on their shelves.

The Commission in its decision noted that on prima facie findings FEREOS abused its position in the market since it is the exclusive representative in certain kiosk items, such as the premium cigars and other cigarette brands. Due to the nature and the extent of the business of FEREOS it seemed impossible for the company to take advantage of its dominant position through the imposition of unfair trading conditions. As regards the alleged restriction of competition and in particular the restriction and/or elimination of a competitor from the market, resulting to the infringement of section 6(1) (a) of the Law, the Commission concluded in a majority decision, that the results of the preliminary investigation of the Service were not conclusive of an infringement. The majority of the Commission also noted that the evidence presented by TH & THE BIG SMOKE was not satisfactory to support its allegations.

The Commission, in relation to the alleged infringement of section 6(1)(b) of the Law against FEREOS, noted in its decision that in order to establish that there is an infringement it is not necessary for the dominant firm to terminate its supply to its customers, but it's enough to show that it threatened to do so. The threat to terminate the cooperation has equally negative results in competition in the market, since this restrains the demand for goods and services from other suppliers.

Furthermore, the Commission noted that the refusal and/or threat of refusal to supply the whole range or part of the FEREOS's portfolio of products, without objective justification on behalf of the dominant company, can lead according to the «Portfolio Effects» theory to the abuse of a dominant position. In its decision, the Commission unanimously concluded that FEREOS's refusal to cooperate with kiosks owners was proved only in the complaint filed by Andros Kiosk Ltd, a case in which an infringement was established and for which an administrative fine has already been imposed on FEREOS following a relevant decision issued by the Commission.

The Commission in a majority decision concluded that the threat to refuse supply, as far as the competition is concerned, under certain circumstances is possible to fall under section 6(1)(b) of the Law. However, the Commission concluded that the evidence collected from the preliminary investigation was not satisfactory to indicate with certainty that the defendant refused to cooperate, with its customers that intended to become or had become customers of the complainant. One of the Commission's Members disagreed with the latter conclusion.

Finally, the Commission in its decision concluded that the allegation of TH & THE BIG SMOKE that FEREOS aimed to weaken competition and to exclude the new competitor from the market, was not evident in this case, based also on the financial results of TH & THE BIG SMOKE, despite the fact that there was a reduction in its turnover during the years 2005 to 2007, in 2008 its turnover began increasing again.

The Commission, concluded by majority that there was not enough evidence before it to prove the infringement of section 6 (1) (b) of the Law and consequently did not consider it advisable, at least in this case, to initiate proceedings pursuant to section 17 of the Law for the investigation of the infringement. The Commission by majority, rejected the allegations of the complainant company, deciding that there was no infringement of 6 (1) (a) and (b) of the Law and thus rejected the complaint.

3. Decision Number: 33/2010 - Complaint of the Association of Cyprus Travel Agents against (a) the Cyprus Tourism Organisation (b) the Cyprus Tourist Guides Association, and (c) the Minister of Commerce, Industry and Tourism (Case number: 11.17.008.36, Decision dated: 14/6/2010)

The case concerned the complaint filed by the Association of Cyprus Travel Agents against the Cyprus Tourism Organization (CTO), the Cyprus Tourist Guides Association and the Minister of Commerce, Industry and Tourism. The subject of the complaint was the alleged price fixing through secondary legislation of the

services offered by the tourist guides which prevented the members of the Association of Travel Agents to negotiate a lower price for the services of tourist guides.

In its decision, the Commission deemed that the Tourist Guides Association, in this case, does not constitute an association of undertakings within the meaning of the Law, since it does not have economic activities. The Cyprus Tourist Guides Association on the basis of its statutes aims to improve the conditions of the profession of Tourist Guides. The Tourist Guides Association does not have contractual relations with the Travel Agents since it does not provide tours or other services. However, the Tourist Guides, as members of the Tourist Guides Association, provide tourist guiding services and are, therefore, considered undertakings.

As regards the Minister of Commerce, Industry and Tourism, the Commission stressed that he does not constitute an undertaking within the meaning of the Law, since his actions do not constitute an economic activity, i.e. supply of goods or services, as defined in the jurisprudence of the European Court of Justice. Instead, the Commission deemed that the alleged actions clearly constitute an act of state.

The Commission held that the same applies as regards the specific conduct of the CTO, which in the course of the alleged conduct acted in its capacity as a public authority. The CTO on the basis of its regulatory framework, acted in its capacity as a public authority by which it contributed to the framework for the exercise of the tourist guide services.

The Commission in its decision noted that although the Cyprus Tourist Guides Association is itself an association of undertakings, the pricing of the tourist guide services is not a result of a decision taken by the Cyprus Tourist Guides Association but was imposed by the Regulatory Administrative Act issued by the CTO and approved by the Minister of Commerce and Industry. The Tourist Guides Association does not have any statutory or mandatory participation in fixing the tourist guides' fees pursuant to the Tourist Occupations and Associations Law 5/1980.

The Commission in its decision, also, stated that in relation to the complainant's allegation for infringement of section 3 of the Law, the complainant did not clarify which is the role of the Tourist Guides Association in the alleged concerned practice and the type of concerned practice that it refers to on the basis of information which is needed to prove infringement of section 3 of the Law. The succinct reference to an infringement of section 3 of the Law with the "concerted practice" of all is not sufficient to prove the infringement of section 3 of the Law.

The Commission, having in mind that the Tourist Guides Association does not constitute an undertaking, but an association of undertakings, unanimously concluded that in this case, the examination of the existence of a dominant position, a constituent element of the infringement of section 6 of the Law is unnecessary.

The Commission unanimously decided that no infringements of sections 3 and 6 of the Law had been established and, therefore, unanimously decided to dismiss the referred complaint.

4. Decision Number: 37/2010 - Complaint and application for interim measures by the Cyprus Rural Bus Association against the (a) Ministry of Communications and Works, Department of Road Transport (b) Nicosia Organization of Public Transport (OSEL) (c) Limassol Transport Organization (EMEL) (d) Paphos Transport Association (O.SY.PA.) (e) Larnaca Transport Organization (Zinonas LTD) (f) Famagusta District Transport Organization (OSEA) (Case number: 11.17.010.06, Decision dated: 30/6/2010)

The case concerned the application for interim measures filed by the Cyprus Rural Bus Association against the (a) Department of Road Transport of the Ministry of Communications and Works, (b) Nicosia Organization of Public Transport (OSEL) (c) Limassol Transport Organization (EMEL) (d) Paphos Transport Association (O.SY.PA.) (e) Larnaca Transport Organization (Zinonas LTD) and (f) Famagusta District Transport Organization (OSEA) in the course of its complaint concerning alleged infringements of sections 3 and/or 6 of the Protection of Competition Law No. 13(I)/2008.

The subject of the complaint is the agreement of Concession of a Public Service Inland Road Transport in Regular Lines, for the duration of ten years that was signed in December 2009 by the Ministry of Communications and Works and the enterprises against which the complaint is addressed. The Department of Road Transport as the Contracting Authority decided to grant the exclusive right to exploit the Public Service Inland Road Passenger Transport in Regular Lines by the enterprises under investigation in separate geographic regions. The Department of Road Transport was in line with the Order issued by the Minister of Communications and Works, dated 22/9/2009; which was published in the Official Gazette of the Government on 22/9/2009.

The Cyprus Rural Bus Association with its application requested the Commission to issue a decision / interim measures by which it would impose:

(a) The immediate suspension of the Agreements signed between the accused parties.

(b) The immediate return of the illegal financial support of the accused companies that was given to them illegally and in violation of Articles 87 and 90 of TFEU, Council Regulation (EC) no.1419/2006 and the Laws no. 30(1) from 2001 to 2007 providing for the Control of State Aid.

(c) The immediate withdrawal of all the actions of the accused until the completion of the investigation of its complaint filed to the Commission.

The Commission in its decision stated that the activities of the Department of Road Transport exclusively concerned the assignment of these services and the Department of Road Transport had carried out these procedures in the course of exercising public authority and the fulfillment of its obligations solely on the basis of Law 101 (I)/09 and hence the Regulation (EC) no.1370/2007.

By its decision, the Commission firstly, concluded that the Department of Road Transport does not constitute an undertaking within the meaning of section 2 of the Law; therefore, the allegations against it cannot be further examined.

As regards the first and second measures requested, the Commission concluded that these do not come under the competence of the Commission, but rather of other public services.

As regards the third measure requested, the Commission examined it only in relation to the accused companies and under the cumulative conditions of section 28 of the Law.

The Commission on the basis of the evidence before it and having in mind that the Concessions of Public Service Inland Road Passenger Transport in Regular Lines were signed on the 2nd December 2009 and the complaint was filed 3 months later, on 4th of March of 2010, in its decision concluded that there was no reasonable strong prima facie case for the infringement of sections 3 and/or 6 of the Law, nor the case was of an urgent nature.

The Commission, also, found that the members of the complainant Association would suffer with the expiry of their licenses mainly financially but the damage would not be irreparable, due to the fact that damages and employment of the permanent staff is a legislative right, ensuring that the State will provide for implementation of Law 101(I)/ 2001, as amended.

The Commission with its decision unanimously decided that the Cyprus Rural Bus Association failed to prove that the three legal conditions for an injunction concur and therefore it rejected the application for issuance of interim measures.

5. Decision Number: 42/2010 - Complaint by Netsmart (Cyprus) Ltd against the Cyprus Telecommunications Authority (CYTA) (Case number: 11.17.007.03, Decision dated:14/10/2010)

6. Decision Number: 43/2010 - Complaint by Thunderworx Ltd against the Cyprus Telecommunications Authority(CYTA) (Case number: 11.17.68/2005, Decision dated:14/10/2010)

The first case concerned the complaint of Netsmart (Cyprus) Ltd (hereinafter «Netsmart») which was submitted to the Commission for the Protection of Competition against the Cyprus Telecommunications Authority (hereinafter «CYTA») regarding the alleged refusal by CYTA to provide Netsmart the opportunity to supply premium sms with the billing at the termination of the message (Premium SMS - Mobile Termination) to CYTA's customers. The second case concerned the complaint of Thunderworx Ltd (hereinafter «Thunderworx») against CYTA, in relation to the same conduct.

Specifically, the subject of the complaints was the alleged refusal of CYTA to supply the service Premium SMS charging at the termination of the message «Mobile Termination-MT». CYTA claimed that the reason for not providing the service was technical inability due to the fact that CYTA is not able to confirm which of its customer have actually applied for this service and gave their consent in receiving such information. CYTA also argued that Netsmart and Thunderworx could have made use of Cybee (its own portal for premium sms).

It is noted that in June 2005, CYTA had started to offer alternative providers of electronic communications the opportunity to provide premium sms to mobile users through the independent provider model on the basis of signed agreements. The cooperation on the basis of the independent provider model gave the electronic communications providers the ability to provide Premium SMS charging at the origination of the message (Mobile Origination - MO). In addition, CYTA enabled cooperation on the basis of the cooperation model through the mobile portal Cybee in relation to premium sms with the possibility of the charge being either at the origination or termination of the massage (depending on the service offered) (Premium SMS MO or MT).

The Commission in its decision concluded that, the offer of CYTA for cooperation through Cybee under the offered conditions could not be regarded as a reasonable alternative, and substitute solution to what Netsmart and Thunderworx requested, which constituted an indirect refusal to supply the requested access. This is mainly due to the fact that service providers through the independent provider model are managing themselves the messages while through the cooperation model Cybee they act as intermediaries of CYTA, and have to pay CYTA and the provider a bigger share of their revenues, and also the use for which the two models of cooperation they are intended for.

The Commission, in its decision also noted that during the oral hearing CYTA claimed that there were no technical problems to provide the requested service and that this service was available. The reasons for refusing this service were commercial ones and in particular, safeguarding the good name of CYTA, from any complaints that may exists in relation to content provided through premium sms and the prices. The Commission in its decision concluded that this did not constitute objective justification for the refusal of the service. Furthermore, it noted that CYTA's concerns could have been dealt with through a written agreement as was the case for the premium sms-MO, premium calls and Bulk SMS. The Commission noted that this was also the view of the Cyprus Regulator of Electronic Communication and Postal Services.

The Commission in its decision also concluded that the refusal to provide access to the requested services amounted to discriminatory behavior on behalf of CYTA in relation to its own brand service Cybee.

Therefore, in this case, the indirect refusal of CYTA and the alleged inability to provide access of this service to Netsmart and Thunderworx for the period of 2005 up to 2010, in the Commission's view, limited the development of new products and new services in the market of electronic communications, namely the Premium SMS - MT, in violation of section 6 (1) (b) and (c) of the Law and prevented the development of healthy

competition to the detriment of consumers. On the other hand, CYTA had enough time to establish the service Cybee, so that the entry of new service providers in the market would become even more difficult.

The Commission concluded that CYTA as a dominant player in the relevant product market, failed to respond to the specific obligation to provide the complainants Netsmart and Thunderworx access to the opportunity to supply the services of premium SMS - MT directly to the users of mobile phone operator CYTA; the access was identified as essential to provide an objectively reasonable solution under fair terms and fair price, so that Netsmart and Thunderworx would be able to provide the services of Premium SMS-MT at retail level.

The Commission with its decision no. 42/2010, imposed on CYTA an administrative fine of €1.360.707 (one million three hundred sixty thousand seven hundred and seven euros) and with its decision no. 43/2010 an administrative fine of €1.968.745 (one million nine hundred sixty eight thousand seven hundred forty five euros) for infringement of section 6 (1) (b) and (c) of the Law and ordered CYTA (a) without undue delay to give the requested essential facility and (b) to prevent the recurrence of such practices and / or actions affecting the principles of free competition.

7. Decision Number: 49/2010 - Application for interim measures by the company Netfon Services Limited against the University of Cyprus (Case number: 11.17.010.12, Decision dated: 5/08/2010)

The decision concerned the application filed by Netfon Services Limited (hereinafter «Netfon Services») to the Commission for the Protection of Competition for issuing interim measures against the University of Cyprus. The application was submitted simultaneously with the complaint against the University of Cyprus for alleged infringement of section 6 (1) (a) and (c) of the Protection of Competition Law No. 13 (I) / 2008.

The complaint and application for interim measures of the applicant company was in relation to the alleged abuse of dominant position allegedly held by the University in the market of providing services regarding the measurements of electromagnetic fields at mobile phone base stations, by setting unfair purchase prices and applying dissimilar conditions to equivalent transactions, i.e. a infringement of section 6 (1) (a) and (c) of the Law. Also, Netfon Services in its complaint alleged that the University is not entitled to operate in the market for providing measurements of electromagnetic fields and participate in relevant competitions.

Netfon Services requested from the Commission to issue a decision / an interim order by which it will prohibit the University to participate, deal, trade and have any activity in any way, in the market of providing services regarding the measurements of electromagnetic fields and order the University to suspend the provision of services regarding the measurements of electromagnetic fields at mobile phone base stations until the conclusion of the Commission's investigation and hearing of the complaint.

The Commission in its decision concluded that the issue as to deciding on whether the University of Cyprus is allowed to provide services regarding the measurements of electromagnetic fields at mobile phone base stations and participation in relevant competitions does not fall under its competences as stated out in section 23 of the Law. However, Netfon Services' allegation was examined in relation to the application for interim measures and was found that under Law No. 144/89 it is not clear and exclusively interpreted, whether the University of Cyprus is allowed to provide services regarding the measurements of electromagnetic fields at mobile phone base stations or not.

The Commission unanimously decided that Netfon Services failed to demonstrate or substantiate that the three legal requirements laid down in section 28 of the Law for the issuance of interim measures existed and therefore, it rejected the application for interim measures.

8. Decision Number: 51/2010 - Complaint of the Association of Approved Private Nurseries of Cyprus against the Ministry of Education and Culture and the Social Welfare Services (Case number: 11.17.009.10, Decision dated: 30/8/2010)

The case concerned the complaint filed by the Association of Approved Private Nurseries of Cyprus against the Ministry of Education and Culture and the Social Welfare Services (SWS) for the alleged infringement of section 3 and 6 of the Protection of Competition Law 13(I)/2008.

The subject of the complaint was the act of the Ministry to broaden the free education offered at preprimary level education by the public preprimary schools and also the fact that the public and the community nurseries receive public facilities whereas the private nurseries do not. This according to the complainant resulted in a significant decrease in the number of the children attending the private nurseries as a lot of children preferred to register with the public nurseries and moved to the public or community nurseries. In addition, the complaint concerns the termination of school supplies to the private nurseries by the Supplies Department of the Ministry. Finally, the complaint concerns a sequence of modifications of the Children Law of 2008 and the Operation of Nurseries Rules initiated by the SWS.

In its decision, the Commission pointed out the objectives of the preprimary education of the Ministry which are an integral part of the national education system, by which the State, fulfills the obligation of providing quality service at zero or minimum cost to the recipients. The operation of the public nurseries is governed by the Basic Education Law (R.A.A. 225/2008). According to the section 8(1) of the R.A.A. 225/2008 "No child is allowed to enroll at a nursery unless he or she is three years old on the 1st of September of the school year of the enrollment". The same section provides that "When there are a number of the available places vacant in the nurseries the Selection Committee selects children under the age of the compulsory education…".

The Commission noted that all of the activities of the public and community nurseries that concern children, who may attend, on the basis of any age or other criteria imposed by the Law, are included in the public education policy that the State is obliged to offer to its citizens, on the basis of section 20 of the Constitution of the Republic.

The Commission in its decision concluded that in the case of the state nurseries (public and community) the act of the Ministry does not fall within the meaning of "service" and therefore it does not fall within the meaning of economic activity and enterprise as per the Competition legislation. On the contrary, the prep-primary education is part of the hard core duties and operations of the State and an integral and substantive branch of the primary education. According to section 20 of the Constitution "Every person has the right to receive education…". This fundamental right which is guaranteed by the Constitution, imposes on the state the obligation to ensure it as an indispensable duty. Therefore, the Commission unanimously decided to reject the first allegation of the complaint.

As for the second allegation, the Commission decided that the Supplies Department of the Ministry has no dominant position in any relevant market, an essential element for the infringement of section 6(1) of the Law. The Commission concluded the above after taking into consideration a sequence of factors: Firstly, the existence of similar points of sale of educational materials. Secondly, the low percentage of sales of the basic supplies of the Supplies Department. Thirdly, the fact that the Supplies Department continues to supply to the private nurseries all materials that cannot be found in other points of sale. As a result, the Commission concluded that any further analysis of the allegation was unnecessary as there was no justification for the existence of a dominant position.

Consequently, the Commission in its decision concluded that regarding the alleged refusal of supply of educational materials from the Supplies Department and discriminative pricing, an infringement of section 6 (1) (b) and (c) of the Law is not substantiated. Also, the Commission concluded that there is no economic dependence between private nurseries and the Supplies because the private nurseries have equivalent alternative solutions to the supply of their educational materials which are not related with severe disadvantages that make their operation impossible. Consequently, the Commission in its decision concluded that there was no infringement of 6(2) of the Law because there is no relationship of economic dependence as is provided for by the Law.

As regards the third allegation, the Commission decided that at the time of the submission of the complaint the complainant had no legal interest because the modification of the Children Law of 2008 and the Operation of Nurseries Rules initiated by the SWS was not in force. The Commission noted the fact that the intention for modification of the above Law does not establish a business activity but it is an act of public authority.

In concluding, the Commission unanimously reiterated that there was no infringement of sections 3 and 6 of the Law and the complaint was rejected.

9. Decision Numbers: 56, 53, 55, 54/2010: Complaints by Christos Kagelis, Georgia Spanou, Theodora Pavlidou, and Costas Constantinou against the Press distributor agency Kronos (Case numbers: 11.17.007.48, 11.17.008.01, 11.17.008.03, 11.17.008.18, Decision dated: 8/9/2010)

The case concerned the complaints submitted by Christos Kagelis, Georgia Spanou, Theodora Pavlidou, and Costas Constantinou (hereinafter "complainants") to the Commission on the 3/9/2007, 7/1/2008, 14/1/2008, and 26/2/2008 respectively, regarding unfair selling prices of the greek press (e.g. Newspapers, magazines), distributed by the greek press agency Kronos Ltd in Cyprus, by which it infringed the provisions of the Protection of Competition Law of 207/89, as it was in force, and now repealed and replaced by the Protection of Competition Law no. 13(1)/2008.

The complainants' allegations focused on the unfair charges imposed by Kronos for the greek press sold in Cyprus. The complainants alleged that these charges were a result of the abuse of the monopolistic position held by the company in the relevant market.

On 28/7/2008 the Commission, decided to examine these four complainants' cases together and gave instructions to the Service to conduct a preliminary investigation of the suspected infringement.

On 14/6/2010, the Commission, having examined the content of the administrative file of the case, unanimously decided on the following, findings:

(a) The prices charged by an undertaking in a specific market, could be deemed excessive, if they permit the undertaking to obtain higher profits compared to those it would have made in a competitive market. The analysis prepared by the Service during the preliminary investigation showed that Kronos, during the time of complaint did not earn higher profits versus its costs.

(b) There is an alternative source of supply for some greek publications, supplied by Kronos, such as the possibility of using a subscription service to obtain publications directly from a publishing house.

(c) In evaluating the contracts signed by the complainee with Argos and Europi companies in Greece, on 25/6/1999 and 6/3/2010, respectively and on the basis of the material before it, the Commission found that the final retail price of the greek publication is not fixed solely by Kronos, but in cooperation with and after the written approval of Argos and Europi publication agencies.

(d) In evaluating the documents of the relevant administrative files, it was found that the contracts signed by Kronos with Argo and Europi publishing companies, have not been amended in any way until today. As a result, the commission of Kronos as provided for in the agreements remains the same as a percentage of the retail price of greek publications, and also the method of determining the retail price of greek publications remains the same. Moreover, in the aforementioned contracts,

it is explicitly provided, that Kronos is responsible for bearing promotional expenses of the press and also the shipping costs from Athens to Cyprus. On the basis of the data which was examined by the Commission and in particular based on the accounts reviewed by the Commission, the complainee company is constantly faced with an unprofitable activity, after taking into account annual increases in fuel, wages etc, while its commission and the method of determining the retail price remains stable.

The Commission, on the basis of the above, unanimously decided that there is no strong evidence for the existence of excessive pricing by Kronos, in the relevant period, and as a result, there is no evidence for the existence of an abusive behaviour. Finally, the Commission noted that the existence or not of excessive pricing, in competition law framework, is decided on a case by case basis, on the basis of the evidence before it and the relevant period.

10. Decision Number: 58/2010 - Complaint by Stefanides & Son Ltd against Members of Association of Imported Vehicles (SEMO) (Case number: 11.17.008.28, Decision dated: 22/10/2010)

The case concerned a complaint filed by Stefanides & Son Ltd ("Stefanides") against the Association of Importers of Motor Vehicles, for the alleged infringement of the Protection of Competition Law 13(I)/2008 regarding the existence of an alleged concerted practice by the Association and its Members. In particular, the complaint referred to the written instructions issued by the Association to its members, instructing them not to participate in the public procurement of the Police Department of the Ministry of Justice ("Police Department"), for the supply of twenty-five vehicles type SALOON 2000cc. The Association instructed its members not to participate in the public procurement unless the Police Department changed specific terms of the public procurement that mainly referred to the guarantee policy and the five year contract offer of spare parts without any price increase.

Stefanides, who had been a member of the Association at the time of the procurement and despite of SEMO's written instructions, participated in the tender and succeeded in the procurement. As a result Stefanides was expelled from the Association for a period of two years.

The Commission on the basis on the analysis provided by the European Court of Justice, section 2 of the Law and the information given by the Association concerning its legal status, decided that the Association falls within the meaning of an association of undertakings, as it is capable of making decisions, representing, protecting and defending the interests of its members.

The Commission, also, decided that the actions and or decision of the Association falls under section 3 of the Law, since the following circumstances concur:

(a) the Association's decision to instruct its members not to participate in the public procurement of the Police Department and therefore its decision to expel Stefanides for a

period of two years due to its participation in the procurement, establishes a code of conduct in the relative market without having the required jurisdiction to do so.

(b) the Association's decision to instruct its members not to participate in the procurement was taken by a statutory body and particularly its board of directors and then communicated to its members by written letter signed by the association's president representing, therefore, the collective will of its members. Also, the decision to expel Stefanides was taken at the association's general meeting representing once again the collective will of its members.

(c) the Association's decision to instruct its members not to participate in the procurement was taken only in regard to its members' interests and not in regard to any public interest. It is obvious by the Association's letter to the Police Department demanding the change of specific terms of the competition, that the aim of the Association was to benefit its members and not the consumers or the Police Department.

(d) the Association's legal nature and status does not in any way prohibit the application of section 3 (1) of the Law.

The Commission decided that, the anti-competitive behavior of the Association proven by the evidence before it, is per se prohibited and therefore there is no need for further investigation concerning the effect of the Association's anti-competitive behavior. The Commission stated that the object of the decision made by the Association's board of directors to instruct its members not to participate in the competition and therefore its decision to expel Stefanides from the Association, is prohibited by the Law, since it resulted in the restriction and/or distortion of competition.

The Association's decision had as a result the restriction of product distribution in the relevant market of passenger vehicles type SALOON 2000cc and the restriction of competition between the Association's members. Also, it eliminated the options of the Police Department to choose from several suppliers as a consumer of the relative product.

It was ruled by the Commission that the Association's decision aimed to pressure the Police Department in accepting changes concerning specific terms of the competition.

The Commission, after the Association's admittance, unanimously decided that Association's decision to instruct its members not to participate in the procurement of the Police Department concerning the supply of twenty-five vehicles type SALOON 2000cc was an anti-competitive concerted practice that resulted in the restriction of the participation and distribution of the relevant product by its members towards the Police Department, in violation of section 3 (1) (b) of the Law.

The Commission imposed an administrative fine of €5.000 to the Association for the infringement of section 3 (1) (b) of the Law. At the same time, the Commission ordered the Association to prevent the recurrence of such practices and/or actions distorting the principles of a freely competitive market.

11. Decision Number: 59/2010 - Complaint and interim measures by R.A. Vouyiouklakis Ltd against Pancyprian Organization of Cattle Farmers (POCF) (Case number: 11.17.010.20, Decision date: 28/09/2010)

The case concerned the application for interim measures filed by R.A. Vouyiouklakis Ltd ("Vouyiouklakis") against the Pancyprian Organization of Cattle Farmers ("POCF") with its complaint for the alleged infringement of sections 6 (1) (b) and 6 (2) of the Protection of Competition Law 13(I)/2008.

In particular, the complaint referred to the abrupt interruption of the supply of fresh cows' milk by POCF to Vouyiouklakis after six months of collaboration. POCF justified its actions by claiming that Vouyiouklakis did not pay a balance due by the company, Achileas A. Vouyiouklakis Ltd, which was owned by Vouyiouklaki's father. Vouyiouklakis, however, stated that the only association that his company had with Achileas A. Vouyiouklakis Ltd was that it had purchased the factory together with the equipment and clarified that, Vouyiouklakis is a different newly founded company and therefore it is not responsible for the balance due to the POCF.

The Commission pursuant to the analysis given by the European Court of Justice and section 2 of the Law decided that, POCF falls within the meaning of the term of association of undertakings, since the organization does not only represent and defend the interests of its members, but also co-operates with the cattle farmers as it directly provides them with fresh cows' milk. Also, the Commission decided that POCF holds a dominant position in the market of wholesale supply of fresh cows' milk mainly because of its 80% market share.

During the oral hearing of the interim measures, POCF claimed that Vouyiouklakis represents "A fraudulent vehicle that was used to deceive the creditors of Achileas A. Vouyiouklakis Ltd". Nevertheless, as noted by Commission, POCF did not mention any legal procedure pending before any court or authority claiming the recovery of the balance due by Achileas A. Vouyiouklakis Ltd to the organization from Vouyiouklakis. Furthermore, the Commission stated that the Court of the Republic of Cyprus is the competent authority to decide if a creditor fraud was committed by the incorporation of Vouyiouklakis.

The Commission decided that according to section 28 of the Law, interim measures can be issued since the following circumstances concur:

(a) A reasonably strong prima facie case of infringement of section 6 (1) (b) of the Law is set, since POCF that holds a dominant position in the market of the wholesale supply of fresh cows' milk, abruptly interrupted the supply of fresh cows' milk towards Vouyiouklakis and the company was unable to obtain the supply it needed from third companies that supply fresh cows' milk. The third companies that have the required permit to purchase and supply fresh cows' milk, produced milk up to the quantity they needed for their own business and production of their own dairy products and could not provide others with fresh cows' milk.

(b) The case is an emergency since the lack of supply of the fresh cows' milk that constitutes the 80% of the materials used to produce Vouyiouklakis dairy products, will lead to the

company's exclusion from the market due to its inability to respond to its customers' orders, and

(c) There is a serious risk of an irreparable damage to the interests of Vouyiouklakis, since the damage that will most probably occur by the lack of supply of fresh cows' milk, which constitutes a significant part of the company's operations, will not only be a financial damage, but the inability of the company to satisfy its costumers and its weakness to respond to their orders, will lead to a permanent loss of market share and if no interim measures are taken immediately it will lead to the dissolution of the company. In the case that this happens, there is a risk that the decision of the Commission after the investigation procedure is concluded, will not be able to restore the damage caused to Vouyiouklakis.

On the basis of the above, the Commission unanimously decided to issue interim measures according to section 23 (2) and 28 of the Law, by which, POCF is ordered, from the publication of the Commission's decision to supply R.A. Vouyiouklakis Ltd with fresh cows' milk every second day (the first day being the following day of the publication of the Commission's decision). Every delivery will comprise five tonnes of fresh cows' milk, according to the order made by R.A. Vouyiouklakis Ltd, on condition that every order is paid prior to its delivery.

4.1.2 Summary of Selected Cases in relation to the Notified Concentrations between Enterprices

1. Decision Number: 50/2010 - Concentration between X.A Papaellinas & Co Ltd and Demetriades & Papaellinas Ltd for the acquisition of 50% of Demetriades & Papaellinas Ltd through the acquisition of the total share capital of Sofocles Demetriades & Son Ltd (Case number: 8.13.010.10, Decision dated: 5/8/2010)

The case concerned the alleged infringement of sections 9 and 13 (1) (a) of the Control of Concentrations between Enterprises Law 22(I)/1999, by X.A. Papaellinas & Co Ltd bearing an obligation to notify the concentration to the Commission for the Protection of Competition.

The concentration between X.A. Papaellinas & Co Ltd (hereinafter «X.A. Papaellinas») and Demetriades & Papaellinas Ltd (hereinafter «Demetriades & Papaellinas») was notified to the Commission on 4/5/2010 and it concerned the acquisition of 50% of the share capital of Demetriades & Papaellinas Ltd through the acquisition of the total capital share of Sofocles Demetriades & Son Ltd (hereinafter «Demetriades»).

The notification followed the advisement made by the Service of the CPC, pursuant to section 14 of the Law, by which it informed X.A. Papaellinas, that it had come to its attention that the ownership of Demetriades & Papaellinas was taken over by Papaellinas Group of companies and pointed out to X.A. Papaellinas its obligations that derive from section 13 and 9 of the Control of Concentrations between Enterprises Law.

The Commission in its decision noted the obligation of X.A. Papaellinas to notify the Commission within one week from the act of concentration. The Commission found that the agreement for the concentration had taken place on 17/2/2010 and it was notified to the Commission on 4/5/2010 following a letter sent by the Service. On the basis of the above, the Commission unanimously decided that X.A. Papaellinas had infringed the provisions of section 13 (1) (a) of the Control of Concentrations between Enterprises Law.

Furthermore, the Commission noted that the notified concentrations should not have been put into effect before the approval by the CPC; otherwise the companies are in infringement of section 9 of the Control of Concentrations between Enterprises Law.

The Commission in this case found that the concentration was put into effect on the 17/2/2010 which is the date of signing of the agreement. According to the agreement the transfer of the shares in the name of X.A. Papaellinas and the transfer of control to X.A. Papaellinas were completed simultaneously with the signing of the agreement.

The Commission having in mind that the acquisition of the above share capital constituted a concentration, it decided that X.A. Papaellinas had proceeded to put into effect the transaction which is an infringement of section 9 of the Control of Concentrations between Enterprises Law, before the notification of the approval of the concentration by the Service pursuant to section 19 (a) of the Control of Concentrations between Enterprises Law.

The Commission unanimously decided that X.A. Papaellinas infringed sections 13 (1) (a) and 9 of the Control of Concentrations between Enterprises Law and imposed a fine of €10.000 (ten thousand euros) in relation to the first infringement and a fine of €20.000 (twenty thousand euros) in relation to the second infringement.

2. Decision Number: 61/2010 - Notification of the concentration for the acquisition of 50% of the share capital of Skyramont Quarries Ltd, which belongs to Poullas Tsadiotis Ltd by Skyra Lima Public Ltd. (Case number: 8.13.010.11, Decision dated: 29/9/2010)

The above mentioned concentration was notified to the Commission for the Protection of Competition on 20/6/2010. With the proposed concentration Skyra Lima Public Ltd (hereinafter «Skyra Lima») will acquire 50% of the share capital of Skyramont Quarries Ltd (hereinafter «Skyramont»), which belongs to Poullas Tsadiotis Ltd (hereinafter «Poullas Tsadiotis»). Therefore and according to their agreement, Skyra Lima and Poullas Tsadiotis will jointly control Skyramont Quarries.

The three undertakings involved are Skyramont Quarries, Poullas Tsadiotis and Skyra Lima. Skyramont Quarries belongs to Poullas Tsadiotis which is controlled by Athinodorou Brothers Super Beton Public

Ltd, whereas Skyra Lima belongs to the group of companies Iacovou Brothers Group Ltd. The three undertakings involved are shareholders in other quarries and are active in the market for the production of aggregates.

In evaluating the concentration, the Service examined the relevant product and geographic market for the production and distribution of aggregates, the production and distribution of premix, the production and distribution of bitumen and the market for construction/ building projects and infrastructure projects.

The market for aggregates was found to be affected by the proposed concentration as a result of the relationship that existed between the three undertakings involved on a horizontal level. The combined market share of the undertakings involved exceeded 15%. The geographic area was found to be the area within a 50 to 100 km radius (depending on the landscape and the road infrastructure) from the site of Skyramont Quarries.

In addition, the market for the production and distribution of premix was also determined to be affected by the alleged concentration. The geographic market for the distribution of premix was found to be the area around the production point that did not exceed the sixty minutes time frame. The market for the production and distribution of premix was affected by the relationship that existed on a vertical level, between the three undertakings involved. In particular, the combined market share of the three undertakings involved exceeded 25%.

The Commission on 10/9/2010, acting upon section 19 of the Law 22(I)/99, reviewed the preliminary assessment conducted by the Service and decided to proceed with the full investigation (phase two) of the notified concentration. At the full investigation stage (phase two), it was examined whether the concentration was compatible with the conditions of the competitive market after taking into account the structure of the affected markets, the demand and supply trends, the alternative sources of supply of the products affected, any barriers to entry, the market position of the participating undertakings and the undertakings related to, the interests of the intermediate and final customers of the products, as well as the views/ opinion of third parties in relation to the notified concentration.

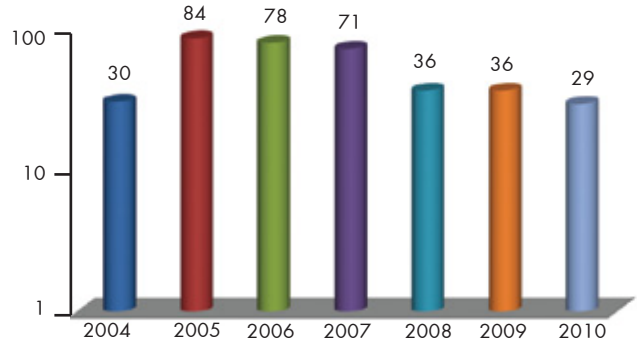
The Service concluded that the above mentioned concentration raised a number of serious concerns in relation to its compatibility with the competitive market. In particular, the concern of the Service was the possibility of foreclosing the market of bitumen as a result of the relationship that exists between the three undertakings on a vertical level. The parties involved undertook – with a formal letter to the Commission on the 24th of September of 2010 - a commitment to increase the supply of aggregates (up to their production capacity) in the event of an increase in demand. Accordingly, the commitments undertaken by the parties involved proved to be sufficient for remedying the Commission's concerns and the Commission declared the concentration compatible with the competitive market.

4.2. General overview of cases in 2010

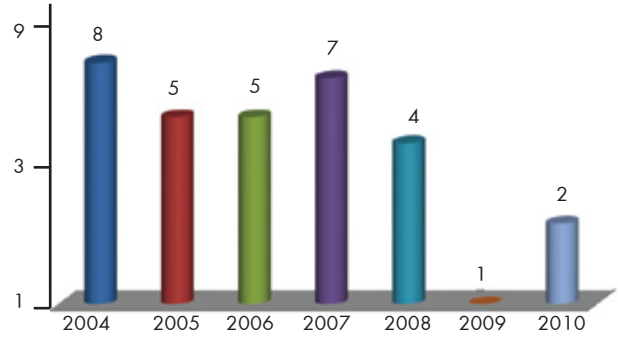
4.2.1. The Protection of Competition Law of 2008

During 2010, a total number of twenty-nine complaints were submitted for alleged infringements of the Protection of Competition Law 2008, and two ex officio investigations were ordered by the Commission for the Protection of Competition. The graphical representations illustrated below exhibit a comparison of investigations conducted in previous years:

Number of Complaints filed before the C.P.C., per annum



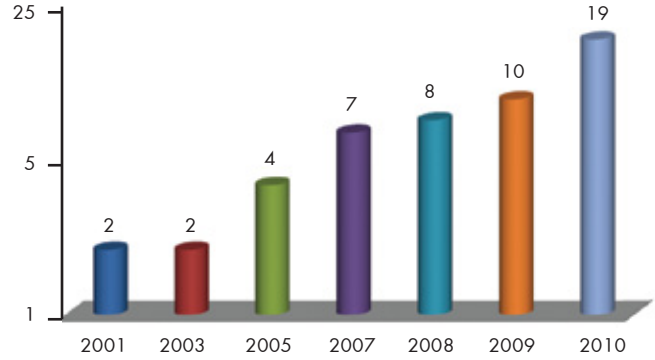
Number of Ex Officio Investigations conducted by the C.P.C., per annum



Out of the twenty nine complaints lodged in 2010, twenty-one considered to be falling within the competences of the Commission and accordingly issued instructions to the Service to conduct a proper preliminary investigation. The remaining complaints did not fall within the competences of the Commission, or were not submitted in the designated legal form. Out of the twenty-one complaints lodged, one was withdrawn, and as a result the number of complaints for which a preliminary investigation was conducted in 2010, was reduced to twenty.

In January 2010, fifty-six complaints were pending before the Commission for the Protection of Competition, relating to the years 2001-2009. By the end of December 2010 the number of pending complaints was significantly reduced to fifty-two. A comparison of the cases which were pending by the end of 2010 as from previous years, as well as the complaints lodged during the year under review is illustrated in the graphic representation below:

Number of cases pending before the C.P.C. by the end of 2010

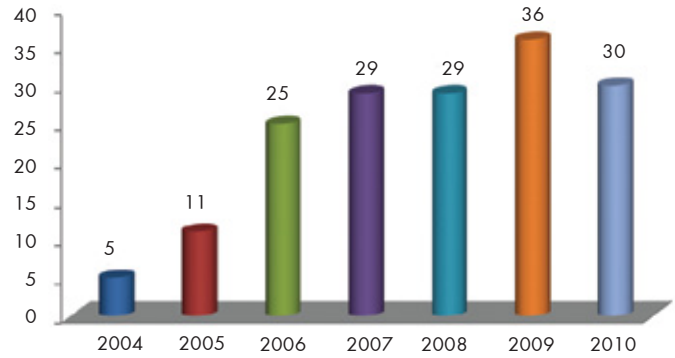


In 2010, similarly to the previous years, the majority of the complaints investigated by the Commission concerned the alleged abuse of dominant position, whereas the rest, including the ex officio investigation, concerned the potential existence of anti-competitive practices, or agreements between groups of enterprises and concerted practices between enterprises.

4.2.2. Control of Concentrations between Enterprises Laws of 1999 and 2000

Pursuant to the provisions of the Control of Concentrations between Enterprises Laws of 1999 and 2000 thirty proposed concentrations between enterprises were notified in 2010 to the Service of the Commission for the Protection of Competition. The number of the concentrations that were notified to the Commission shows a decrease compared to the previous year, although it remained stable compared to 2007 and 2008. The illustration below shows a comparative picture of concentrations notified during the last seven years:

Number of concentrations notified to C.P.C., per annum



In addition to the thirty concentrations that were notified, the Commission also examined four notified concentrations that were outstanding from 2008.

Furthermore, the Commission examined two proposed concentrations notified to the European Commission pursuant to article 4(5) of Council Regulation 139/2004 and for which, the Commission decided not to oppose to the examination of the concentrations by the European Commission because there were no affected markets within the Republic of Cyprus. The reasoned submissions related to the following concentrations:

1. Concentration regarding the acquisition of Norfolk Holdings B.V (Netherlands) from DFDS Tor Line Holding AB (Denmark) company. The two enterprises are involved in Short sea ferry transport with boats and ferries in North Europe (Comp/M.5756).

2. Concentration concerning the acquisition of control from Eli Lilly & Co (USA) Company of some parts of Pfizer Inc (USA) company. The two enterprises are involved in the pharmaceuticals sector (Comp/M.5843).

The Commission also examined three concentrations notified to the European Commission pursuant to article 19(1) of the Council Regulation 139/2004, in order to confirm, prior to the predetermined deadline that it did not intend to submit a request for referral. Cases concerned the following concentrations:

1. Concentration concerning the acquisition of joint control from Cegelec company (France) from VINCI group (France). The two companies operate in the fields of electrical, engineering and air conditioning engineering (COMP/M.5701).

2. Concentration between DP World NV (Belgium), Manuport Group NV (Belgium) and Euroports S.a r.l. (Luxembourg) for the creation of a joint venture between Trilogiport JV (Belgium), aiming at the operation of an inland intermodal container terminal facility at Albert Channel and Meuse River meeting points in Liege. DP World NV conducts through its subsidiary companies, port and other related activities, including stevedoring activities at the port of Antwerp. Euroports is engaged in port operation and provides related services and facilities across Europe (COMP/M.5751).

3. Concentration concerning the acquisition of joint control of Groupe Proclif SAS (France) by Ramsay Health Care (Australia) and Predica (France) companies. The companies are engaged in the operation of private hospitals in Australia and France as well as in the provision of insurance and financial services (COMP/M.5794).

4.3 Judgments of the Supreme Court

During 2010 six administrative recourses were filed for the annulment of final or interim decisions of the Commission while two administrative recourses filed in 2009 for the annulment of final decisions of the Commission were withdrawn. Moreover, during 2010 the Supreme Court issued three judgments relating to two administrative recourses that were filed against the Commission's decisions and to one administrative recourse.

On 23/9/2010, the Supreme Court confirmed the decision of the Commission on administrative recourse number 612/2009 dated 20/3/2009 in relation to the complaint of Akis Ioannou and A. Ioannou Medicare Ltd, Forum Optical Ltd and Ofthalmos Laser Centre Ltd companies against Aktis Ltd Company for the alleged infringement of the Law. The Supreme Court, in its judgment, held that the Commission took its decision after thorough investigation and it was sufficiently justified, dismissing the allegations of the recourse.

Moreover, the Supreme Court with its judgment on administrative recourse number 935/2007 dated 24/8/2010 annulled the Commission's decision dated 5/6/2007, dismissing the complaint of Mr. Vyronas Teggerakis against Wella A.G and M&V Cosmetics Ltd because there was no infringement of section 6(3) of Law 207(I)/2007 as it was in force. The Supreme Court held that due to the absence of signed minutes from the administrative file of the case the decision becomes vulnerable and consequently annulled it. In order to fully comply with the Supreme Court's judgment, the Commission unanimously decided to re-examine the annulled decision dated 5/6/2007 on the basis of the legal and factual regime which was in force at the time of the decision.

Finally, the Supreme Court with its judgment on the administrative recourse number 130/2007 dated 16/3/2010, annulled the Commission's decision dated 30/5/2005 with respect to the ex-officio investigation conducted against the Cyprus Telecommunications Authority, where it was held that CYTA had infringed section 6 of the Law which was in force at the time and imposed an administrative fine of C£50.000. The Supreme Court, due to the legal precedent in the case of CYTA versus the Commission for the Protection of Competition (Administrative Recourse 48/2004), where it was held that the composition of the Commission was unlawful due to the participation of Mr. Efstathiou, annuled the Commission's decision. The Commission decided not to re-examine the annulled decision, as the public interest could not be served by conducting a new ex-officio investigation, especially bearing in mind that the fee imposed by the Commission on the basis of the annulled decision that CYTA «overcharged», had been returned to the undertakings.

International Cooperation

5. INTERNATIONAL AND EUROPEAN COOPERATION

The Commission for the Protection of Competition considers international relations to be closely linked to its vision of becoming an active European Competition Authority that applies international practices and promotes competition rules at community and international level. The participation of staff members of the C.P.C. in various working groups is one of the most effective ways of developing cooperation, mutual contribution and reshaping competition policies aimed at enabling the Commission to carry out its practices in the most efficient way for the benefit of the economy at large. The active participation of the Commission in the European Competition Network is considered vital, following the enforcement of the Council Community Regulation (EC) No.1/2003. of 16 December 2002 on the implementation of the rules laid down in Articles 101 and 102 of the TFEU.

5.1 Cooperation at European Level

Directors' General Meeting

The Chairman of the Commission for the Protection of Competition participated in the meeting of the Directors' General of National Competition Authorities, which took place on the 16th and 17th of November 2010 in Brussels. Heads of National Competition Authorities of the Member States of the European Union participated in the meeting.

The Heads of European National Competition Authorities, during the meeting, adopted a resolution concerning the continued need for effective institutions. Additionally, they reiterated that the effective enforcement of competition rules ensures the economic function of a free market in favour of economic development and for the benefit of the citizens of all Member States of Europe.

Special emphasis was given to the evaluation of national measures which were taken for tackling financial and economic crisis aiming on a financial stability and also for mitigating the effects of credit squeeze on the real economy.

3rd Lisbon Conference on Competition Law and Economics

On the 14th and 15th of January 2010, the Chairman of the Commission for the Protection of Competition took part in the 3rd Conference of the Portuguese Competition Authority regarding Competition Law and Economics, held in Lisbon. The Conference was attended by more than three hundred delegates including academics, representatives of national Competition Authorities, judges, lawyers, and businessmen. Experts with international reputation presented their results of studies concerning the main areas of Competition Law and Economics, such as multi-purpose markets, energy, intellectual property rights and enforcement of competition policy amid crisis.

Ad hoc Meeting of Directors' General

On 1st of June 2010, the Chairman of the Commission for the Protection of Competition participated in the ad hoc meeting of Directors' General, which took place in Brussels. The meeting focused on the legal procedures, which are applicable in all twenty seven Member States of European Union in relation to the enforcement of Competition Law.

Working group meeting of the European Competition Network in the fields of banking and payment services and financial services

On 7th and 8th of October 2010 the Director of the Commission for the Protection of Competition, attended a meeting of two working groups of the European Competition Network held in Brussels. The first working group concerned banking and payment services and the second financial services. Issues discussed included state aid to support banks in the financial crisis and also the results of different studies of the Directorate General of Competition and National Competition Authorities concerning interchange fees and other charges and the need for greater transparency in banking to avoid anti-competitive practices that affect consumers.

5.2 Representation in International Conferences

Ninth Annual Conference of the International Competition Network

From the 27th until 29th of April 2010, two members of the Commission for the Protection of Competition participated in the ninth International Competition Network in Istanbul. The International Competition Network is an informal network between national Competition Authorities, and promotes the enforcement of competition rules and policy worldwide. The International Competition Network is unique, as it is the only international body devoted exclusively to competition law enforcement and its members represent national and multinational competition authorities and as well as the European Commission. Its members work closely with non-governmental advisors, undertakings and consumer groups, academics, legal and financial professionals in order to achieve consensus on the purpose of improving the international convergence and cooperation.

During the conference, issues discussed included jurisdictional review of mergers regarding the notification procedures, investigation and analysis and also issues like cartels and unilateral anti-competitive business practices in a dominant position.

International Competition Network Agency Effectiveness Working Group Meeting

On the 12th and 13th of July, 2010 the Chairman of the Commission for the Protection of Competition, attended the working group for issues of improving effectiveness of Competition Authorities which was organized by the International Competition Network and the Office of Fair Trading in London. The main issue of this workshop was the determination and development of the abilities which will contribute to the implementation of competition policy in developing or transitional economies, improving the effectiveness of the competition authorities.

International Competition Network Cartel Workshop meeting

On the 5-7 October 2010, the Chairman of the Commission for the Protection of Competition attended the International Competition Network Cartel working group in Yokohama, Japan. During the three day workshop the participants had the opportunity to discuss the new methods and tools to detect, expose and fight against cartels. Also, there were discussions for the efficient cooperation between the National Competition Authorities for the detection of illegal cartels, the exchange of information and the efficient enforcement of the Leniency Programmes. Lastly, there were discussions of the imposition of fines by the National Competition Authorities.

6. GENERAL REMARKS

Accomplished Work

According to the statistical data presented, the Commission investigated and completed a significant number of cases during the period under review, which was disproportionate to the resources available at its disposal, in terms of its human resources (or plain workforce). The pending caseload inherited from the past has almost been completely investigated, with the exception of those cases annulled as a result of the decision by the Plenary of the Supreme Court.

Concentrations - Results and obstacles

The Commission adhered closely to the deadlines imposed by the Law in relation to the concentrations notified during the year under review. Despite the Commission's repeated instigations and announcements, enterprises bearing an obligation for notification continue not to fully respond to the obligations that the Law prescribes resulting in unnecessary delays and adding burden upon the Commission's personnel, who make strenuous efforts to respond to their own obligations. As it has been sadly observed, a lot of the involved parties perceive the notification procedure as a formal clarification procedure, which is not actually so. The notification procedure for Concentrations is an ex-ante procedure, and this is how it should be regarded as far as competition issues are concerned. As officially announced, the leniency demonstrated so far, based on the mitigating factor of ignorance, will not continue indefinitely.

Legal lodgement of complaints

The absence of complete conformity to the Law was also an element which characterized a considerable number of complaints. It is of uppermost importance that any interested party comprehends and at the same time respects that the lodgement of a complaint must be in accordance with the law and must include all the information that the Law specifies. The Commission has made it absolutely clear that it is not obliged to supplement any missing information and evidence required by the Law, in respect of complaints lodged. The lodgement of a complaint should be the product of responsible action and thought, as a means of avoiding unnecessary and unprovoked adverse publicity on enterprises and individuals without justification. The deceitful lodgement of complaints harms the institution itself and as far as the Commission is concerned, it will not allow itself to become a bandwagon in furtherance of intentions.

Restructuring plan

As already noted, the Commission progressed slowly but steadily with the implementation of its restructuring plan. Nevertheless, in the absence of the desirable autonomy, the Commission was obliged to suffer the negative consequences of the time-consuming procedures of the governmental budget and other bureaucratic procedures. It should finally be made clear and at the same time duly respected that, the effective operation of an independent Commission for the Protection of Competition, presupposes flexibility of actions and financial and administrative independence. Otherwise, we will continue to trail behind Europe. The Commission's stance is not an innovation but Community advice dictating that National Competition Authorities should be able to operate with more flexibility and effectiveness, free from any influences and dependencies.

Essential and necessary Infrastructure

One of the crucial issues for each complaint lodged is conducting the investigation within a short-time interval. A prompt investigation of a complaint ceases unfair market practices taking place at the expense of the consumer and restores the market. There is only one magic recipe for achieving this: Reinforcing the Commission's administral capacity. Without «case-handlers», cases pile up and the distortion of competition continues while the scopes, aims and credibility of the Commission are irreparably damaged.

Culture on competition issues

At the time of identifying and reporting these negative observations, the Commission is fully aware that the necessary culture on competition issues continues to be relatively absent from the business market and the Commission frequently faces the lack of instrumental knowledge on behalf of the major market players. The Commission, with limited resources at its disposal, will continue in planning the organization and/or its participation in conferences and other events that aim to enlighten and report on competition issues.

Decisions - Demanding and time-consuming work

As it has been repeatedly stated publicly, the Commission stresses out that reaching a decision on anticompetitive behaviour or practices constitutes a hard and demanding work, which can only be achieved after all the relevant key factors have been investigated and analyzed. On the other hand, the Commission has a duty to respect the rights of the undertakings involved in the proceedings, whether those relate to the right to an oral hearing, or the right to be granted adequate time to defend their positions. The Commission does not act as a price-control service or as an observatory of prices, which expresses its opinion instantly, a confusion that systematically is linked to the Commission.

Legal restrictions and work framework

The documentation of an anticompetitive behaviour requires a thorough investigation and analysis of a significant number of parameters specified by the Law and case-law, but also the economic assessment of the relevant factors, which, by definition, constitute a time consuming procedure. The Commission, as the competent legal Authority, has a duty to act according to the law, by applying the general principles of Administrative Law that inevitably guarantee an unbiased judgement. It should also be stated that the Commission, in exercising its competences, has its own legal restrictions which are determined by the legal regime in force which it has to implement and adhere to.

Aims and Objectives of the Commission for the Protection of Competition

As already mentioned in various parts of this Report, the Commission for the Protection of Competition considers – as it should - that is now able to organize the necessary structures for its effective operation. Apart from the gradual recruitment and training of personnel, the internal regulations and the Commission's operating procedure are being restructured.

Transparency principles

The principles of transparency and cooperation with all involved parties have now been satisfactorily adopted. The Commission has clarified from the beginning that there is no dispute with the business community, but on the contrary, it wishes to reinforce and strengthen enterprises operating, under conditions of a free competitive market. Already, a database of relevant information for each sector of economic activity is being developed, so far, with the assistance and the cooperation of all the parties involved.

Reconnection with International Networks of Competition and Co-operation

In the field of competition, there are a number of well organized networks operating both at a European level as well as at an International level. The Commission wishes to re-establish cooperation with these networks, thus enabling it to express its own stance/views on various competition issues which, from time to time, are the subject of collective investigation. Through its participation in these networks, the Commission has only to gain, from the accumulated experience of other competition authorities with more years of operation and more experience in the field of competition. Unfortunately, due to limited resources the Commission cannot always participate in Special Committees or in Experts' Committees where competition issues are discussed.

European proceedings

The new Legislation enacted in 2008 has undoubtedly set the ground for a more productive and effective operation of the Commission, with total compatibility with the European procedures in the field of competition. The new Legislation must be applied along with a number of new internal measures of operation that are considered necessary. The internal measures are determined by the Notices of the Commission on various technical issues, as well as the case-law of the European Courts. As already noted, the Commission's ambition is to be in complete conformity with the rest of Europe, which in any case is deemed necessary due to the common market which continues to enlarge and develop.

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